

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ANGEL MCDANIEL and CONSTANCE
SIMON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HOME BOX OFFICE, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Angel McDaniel and Constance Simon (“Plaintiffs”), individually and on behalf of all other persons similarly situated, by and through their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action suit brought on behalf of all persons who subscribe to HBO Max.

2. Home Box Office, Inc., (“Defendant” or “HBO”) develops, owns, and operates HBO Max, one of the largest streaming services in the United States.

3. Plaintiffs bring this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in knowingly disclosing personally identifiable information—including a record of every video clip they view—to Facebook without consent.

4. The United States Congress passed the Video Privacy Protection Act (“VPPA”) in 1988, seeking to confer onto consumers the power to “maintain control over personal information divulged and generated in exchange for receiving services from video tape service

providers.” S. Rep. No. 100-599, at 8. “The Act reflects the central principle of the Privacy Act of 1974: that information collected for one purpose may not be used for a different purpose without the individual’s consent.” *Id.*

5. Defendant violated the VPPA by knowingly transmitting Plaintiffs’ and the putative class’s personally identifiable information to unrelated third parties.

COMMON FACTUAL ALLEGATIONS

I. The VPPA

6. The origins of the VPPA begin with President Ronald Reagan’s nomination of Judge Robert Bork to the United States Supreme Court. During the confirmation process, a movie rental store disclosed the nominee’s rental history to the Washington City Paper, which then published that history. Congress responded by passing the VPPA, with an eye toward the digital future. As Senator Patrick Leahy, who introduced the Act, explained:

It is nobody’s business what Oliver North or Robert Bork or Griffin Bell or Pat Leahy watch on television or read or think about when they are home. In an area of interactive television cables, the growth of computer checking and check-out counters, of security systems and telephones, all lodged together in computers, it would be relatively easy at some point to give a profile of a person and tell what they buy in a store, what kind of food they like, what sort of television programs they watch, who are some of the people they telephone. I think that is wrong.

S. Rep. 100-599, at 5-6 (internal ellipses and brackets omitted).

7. The VPPA prohibits “[a] video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider.” 18 U.S.C. § 2710(b)(1). The VPPA defines personally identifiable information as “information which identifies a person as having requested or obtained specific video materials or services from a video service provider.” 18 U.S.C. § 2710(a)(3). A video tape service provider is “any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or

delivery of prerecorded video cassette tapes or similar audio visual materials.” 18 U.S.C. § 2710(a)(4).

II. Facebook and its Business Tools

8. Facebook is the largest social networking site on the planet, touting 2.9 billion monthly active users.¹ Facebook describes itself as a “real identity platform,”² meaning users are allowed only one account and must share “the name they go by in everyday life.”³ To that end, when creating an account, users must provide their first and last name, along with their birthday and gender.⁴

9. Facebook generates revenue by selling advertising space on its website.⁵

10. Facebook sells advertising space by highlighting its ability to target users.⁶ Facebook can target users so effectively because it surveils user activity both on and off its site.⁷ This allows Facebook to make inferences about users beyond what they explicitly disclose, like their “interests,” “behavior,” and “connections.”⁸ Facebook compiles this information into a

¹ Sean Burch, *Facebook Climbs to 2.9 Billion Users, Report 29.1 Billion in Q2 Sales*, YAHOO (July 28, 2021), <https://www.yahoo.com/now/facebook-climbs-2-9-billion-202044267.html>

² Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles to Figure It Out*, WALL. ST. J. (Oct. 21, 2021).

³ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY, https://www.facebook.com/communitystandards/integrity_authenticity.

⁴ FACEBOOK, SIGN UP, <https://www.facebook.com/>

⁵ Mike Isaac, *Facebook’s profit surges 101 percent on strong ad sales.*, N.Y. TIMES (July 28, 2021), <https://www.nytimes.com/2021/07/28/business/facebook-q2-earnings.html>.

⁶ FACEBOOK, WHY ADVERTISE ON FACEBOOK, <https://www.facebook.com/business/help/205029060038706>.

⁷ FACEBOOK, ABOUT FACEBOOK PIXEL, <https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

⁸ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting>.

generalized dataset called “Core Audiences,” which advertisers use to apply highly specific filters and parameters for their targeted advertisements.⁹

11. Advertisers can also build “Custom Audiences.”¹⁰ Custom Audiences enables advertisers to reach “people who have already shown interest in [their] business, whether they’re loyal customers or people who have used [their] app or visited [their] website.”¹¹ Advertisers can use a Custom Audience to target existing customers directly, or they can use it to build a “Lookalike Audiences,” which “leverages information such as demographics, interests, and behavior from your source audience to find new people who share similar qualities.”¹² Unlike Core Audiences, advertisers can build Custom Audiences and Lookalike Audiences by supplying Facebook with the underlying data. They can do so through two mechanisms: by manually uploading contact information for customers, or by utilizing Facebook’s “Business Tools,” which collect and transmit the data automatically.¹³

12. Advertisers control what actions—or, as Facebook calls it, “events”—Facebook’s Business Tools will collect. The Business Tools are automatically configured to capture certain data, like when a user visits a webpage, that webpage’s Universal Resource Locator and metadata, when a user downloads the mobile app, clicks on a button, or makes a purchase.¹⁴

⁹ FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK, <https://www.facebook.com/business/news/Core-Audiences>.

¹⁰ FACEBOOK, ABOUT CUSTOM AUDIENCES, <https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

¹¹ FACEBOOK, AD TARGETING, HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting>.

¹² <https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

¹³ Facebook, Create a Customer List Custom Audience, <https://www.facebook.com/business/help/170456843145568?id=2469097953376494>; Facebook, Create a Website Custom Audience, <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>.

¹⁴ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING, ADVANCED, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also FACEBOOK, BEST

Advertisers can also configure Facebook’s Business Tools to track other events. Facebook offers a menu of “standard events” from which advertisers can choose, including what content a visitor views or purchases.¹⁵ Advertisers can also create their own tracking parameters by building a “custom event.”¹⁶

13. One such Business Tool is the Facebook Tracking Pixel, which is a piece of code that advertisers, like HBO, integrate into their websites. As the name implies, the Facebook Tracking Pixel “tracks the people and type of actions they take.”¹⁷ When the Facebook Tracking Pixel captures an action, it sends a record to Facebook. Once this record is received, Facebook processes it, analyzes it, and assimilates it into datasets like Core Audiences, Lookalike Audiences, and Custom Audiences.

14. Facebook’s other Business Tools function essentially the same way. The Conversions API, for example, tracks “[s]erver events,” which are “linked to a Meta Pixel ID and are processed like web events sent via Pixel.”¹⁸ This “entails establishing a connection between an advertiser’s server and Facebook.”¹⁹ Facebook “recommend[s] that advertisers implement the Conversions API alongside their Meta Pixel and follow other best practices.”²⁰

PRACTICES FOR FACEBOOK PIXEL SETUP,
<https://www.facebook.com/business/help/218844828315224?id=1205376682832142>;
 FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

¹⁵ FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS,
<https://www.facebook.com/business/help/402791146561655?id=1205376682832142>.

¹⁶ FACEBOOK, ABOUT STANDARD AND CUSTOM WEBSITE EVENTS,
<https://www.facebook.com/business/help/964258670337005?id=1205376682832142>; *see also*
 FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

¹⁷ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

¹⁸ Facebook, Conversions API, <https://developers.facebook.com/docs/marketing-api/conversions-api>.

¹⁹ *Id.*

²⁰ *Id.*

Another example, the App Events API, allows advertisers to track events on their mobile applications, so they can “measure ad performance and build audiences for ad targeting.”²¹

15. Advertisers control how Facebook’s Business Tools identify visitors.²² The Facebook Tracking Pixel, for example, is configured to automatically collect “HTTP Headers” and “Pixel-specific Data.”²³ HTTP Headers collect “IP addresses, information about the web browser, page location, document, referrer and persons using the website.”²⁴ Pixel-specific Data includes “the Pixel ID and cookie.”²⁵

II. HBO and Facebook’s Business Tools

16. HBO advertises HBO Max as a “premium streaming app that combines all of HBO with even more must-see TV series, blockbuster movies, and exclusive Max Originals.”²⁶

17. To subscribe to HBO Max, an individual must pay money, typically between \$10 and \$15 a month.²⁷ HBO Max and HBO’s cable channel have a combined 73.8 million global subscribers and 46.8 million U.S.-based subscribers.²⁸ AT&T, HBO’s parent company, expects that number to reach between 120 million and 150 million by 2025.²⁹

18. HBO has fueled its ambitions by embarking on an unprecedented advertising blitz. In the first half of 2021, HBO outspent every other streaming service on total money spent

²¹ FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>

²² See, e.g., <https://developers.facebook.com/docs/app-events/getting-started-app-events-ios>.

²³ FACEBOOK, FACEBOOK PIXEL, <https://developers.facebook.com/docs/facebook-pixel/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ https://play.google.com/store/apps/details?id=com.hbo.hbonow&hl=en_US&gl=US.

²⁷ <https://www.hbomax.com/subscribe/plan-picker>.

²⁸ Nicole Sperling, *HBO Max and HBO hit 73.8 million subscribers, topping company forecasts*, N.Y. TIMES (Jan. 5, 2022).

²⁹ Sarah Whitten, *AT&T raises HBO Max subscriber forecast, sees 120 million to 150 million by the end of 2025*, CNBC (Mar. 12, 2021).

on advertising, expending \$375 million to showcase new seasons, series and movies on HBO Max.³⁰ Of that, “50% of HBO’s budget was funneled into Facebook campaigns, garnering 23.4 billion impressions from link posts and video ads promoting its new release of Justice League and the star-studded HBO original movie, The Little Things.”³¹ That made HBO Max the top spending advertiser on Facebook for the second quarter of 2021.³²

19. HBO Max coordinates with Facebook to target its advertisements and to set up its Business Tools. Facebook’s “Solutions Engineers team,” a team with more than 100 employees, “works with advertisers to build the technology and infrastructure needed to run more effective campaigns on Facebook, often on top of Facebook’s APIs.”³³ As a top advertising spender, this team and others work closely with HBO.

20. For its top spenders, Facebook also embeds employees to provide strategic advice. This is confirmed through Facebook’s own acknowledgements and congressional testimony. During the 2016 presidential race, Facebook helped campaigns with their digital outreach, providing “political ad strategy [that] was initially modeled on its playbook for top corporate clients: Facebook employees offered on-site support to the U.S. presidential candidates who were considered the presumptive nominees for their parties.”³⁴ When called before Congress to explain the practice, Facebook supplied written answers reiterating its approach was

³⁰ Sam Gansline, *Top 3 Digital Advertisers in the First Half of 2021*, Pathmatics (Aug. 3, 2021).

³¹ *Id.*

³² <https://mediaradar.com/blog/facebook-crushing-it-advertisers/>.

³³ Anthony Ha, *Facebook has a 100-person engineering team that helps advertisers build tools and infrastructure*, TECHCRUNCH (Dec. 29, 2017), <https://techcrunch.com/2017/12/29/facebook-solutions-engineering/>.

³⁴ Deepa Seetharaman, *How a Facebook Employee Helped Trump Win—But Switched Sides for 2020*, WALL ST. J. (Nov. 24, 2019), <https://www.wsj.com/articles/how-facebooks-embed-in-the-trump-campaign-helped-the-president-win-11574521712>.

“consistent with support provided to commercial clients in the normal course of business.”³⁵ As a top corporate client, Facebook provides HBO with this same level of support, helping HBO to, among other things, set up and maximize Facebook’s Business Tools.

21. To target its ads, HBO uses Facebook’s Business Tools, like the Facebook Tracking Pixel.

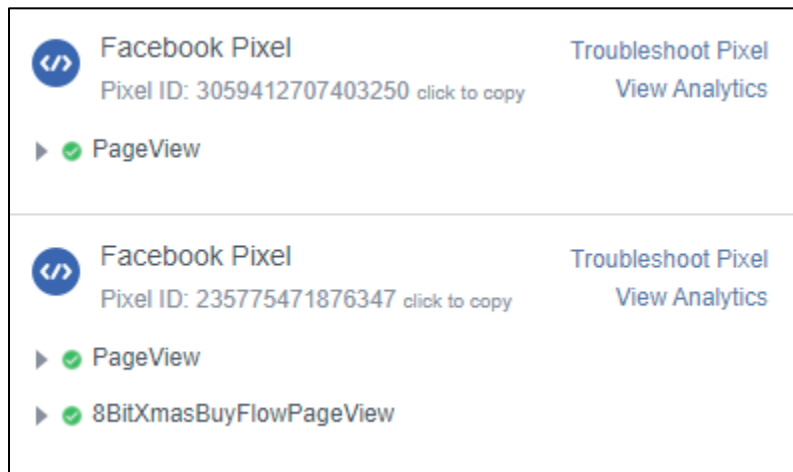
III. HBO And Facebook’s Tracking Pixel

22. HBO integrates the Facebook Tracking Pixel into the HBO Max website.

23. HBO integrates two Facebook Tracking Pixels into its website, with either one or both activated, depending on the page.

24. When a prospective subscriber first signs up, HBO integrates both.³⁶

Figure 1



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³⁵ ENERGY AND COMMERCE COMMITTEE, APRIL 11, 2018 HEARING TITLED FACEBOOK: TRANSPARENCY AND USE OF CONSUMER DATA, <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/House%20QFRs.compressed.pdf>.

³⁶ The following figures rely on a tool that Facebook has developed and made accessible to the public. The tool shows in real-time whether a particular webpage has activated the Facebook Tracking Pixel and, if so, what data the beacon is collecting and disclosing.

25. Following sign up, HBO removes a Facebook Tracking Pixel, retains the other, and continues tracking subscribers across the HBO Max website.

Figure 2 (signing in)

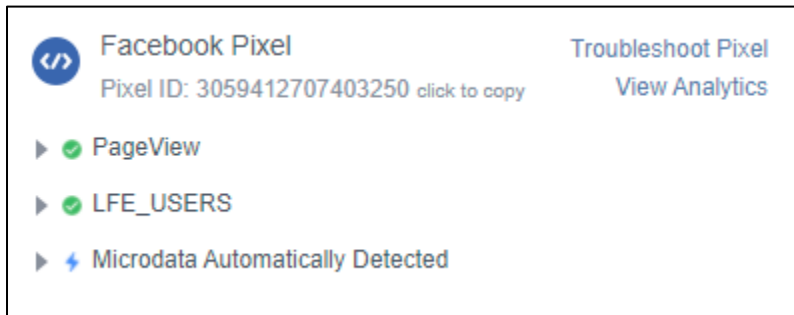
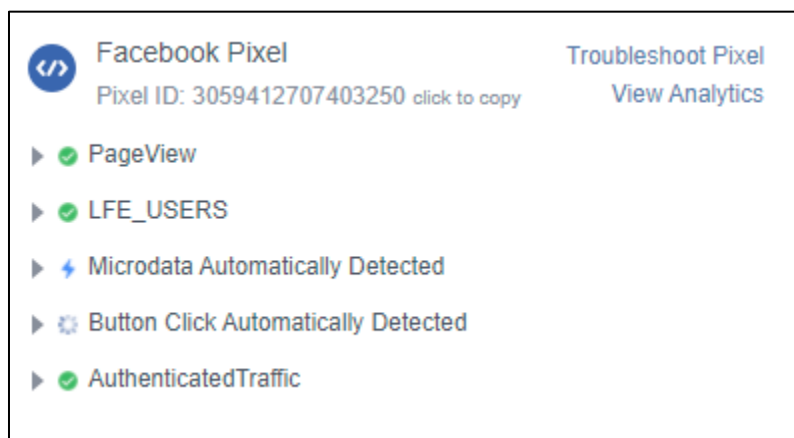
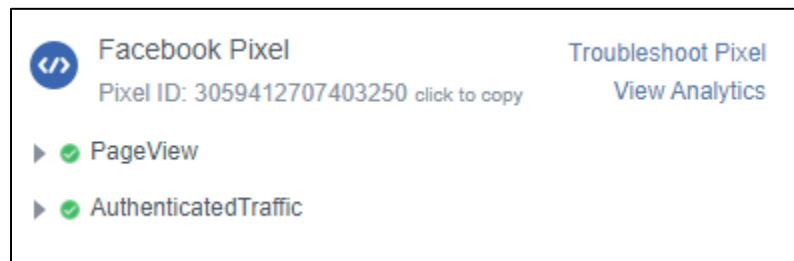


Figure 3 (selecting profile)



26. That includes when a subscriber selects and watches a video. When doing so, HBO captures two events, PageView and AuthenticatedTraffic.

Figure 4



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27. Through PageView, HBO discloses to Facebook what URL a subscriber has accessed.

Figure 5

The screenshot displays the Facebook Pixel interface for a PageView event. It includes a header with the Facebook Pixel logo, Pixel ID (3059412707403250), and links for 'Troubleshoot Pixel', 'Set Up Events', and 'View Analytics'. A warning section states that the pixel was activated 3 times on the page, which can cause errors in event tracking. Below this, the 'ADVANCED MATCHING PARAMETERS SENT' section shows the 'country' parameter set to 'Show'. The 'EVENT INFO' section indicates the 'Setup Method' is 'Manual' and the 'URL Called' is 'Hide'. The full URL is displayed as: https://www.facebook.com/tr/?id=3059412707403250&ev=PageView&dl=https%3A%2F%2Fplay.hbomax.com%2Fepisode%2Furn%3Ahbo%3Aepisode%3AGYWw9MQ10P4i4jAEAAACj&rl=&if=false&ts=1646594411677&sw=1920&sh=1080&ud%5Bcountry%5D=79adb2a2fce5c6ba215fe5f27f532d4e7edbac4b6a5e09e1ef3a08084a904621&v=2.9.55&r=stable&ec=12&o=30&fbp=fb.1.1644808357581.1408347235&it=1646594402896&coo=false&exp=p1&rqm=GET&dt=8f6z4rga5dq9sfw9ukh8lx1vrr6v4911. The 'Load Time' is 28.23 ms and the 'Pixel Location' is 'Hide'. The full URL for the pixel location is: https://play.hbomax.com/episode/urn:hbo:episode:GYWw9MQ10P4i4jAEAAACj

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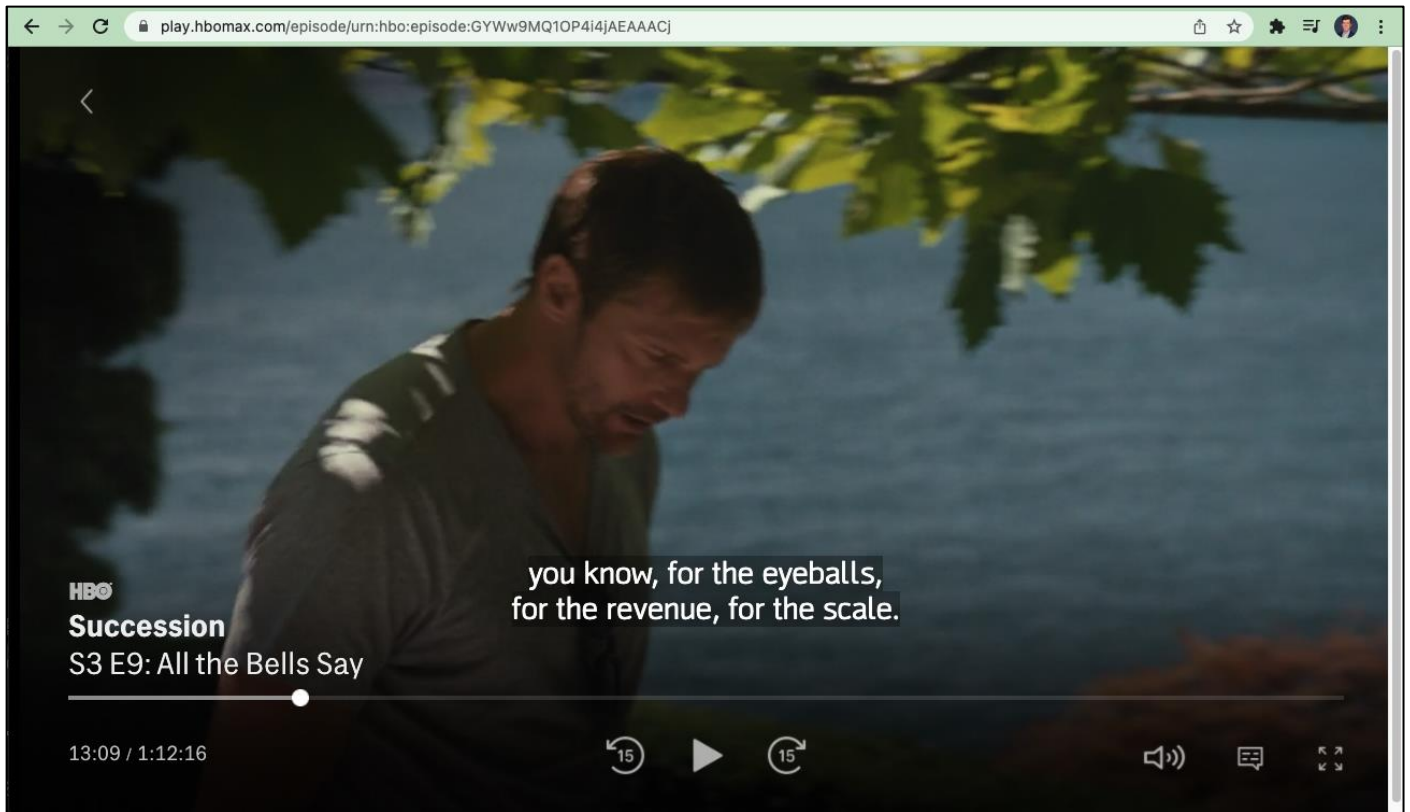
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28. The URL from Figure 5, for example, generates the video in Figure 6 below.

Figure 6



29. With event data from PageView, an ordinary person seeking to discover what video is being watched need only enter that URL into a browser and hit enter.

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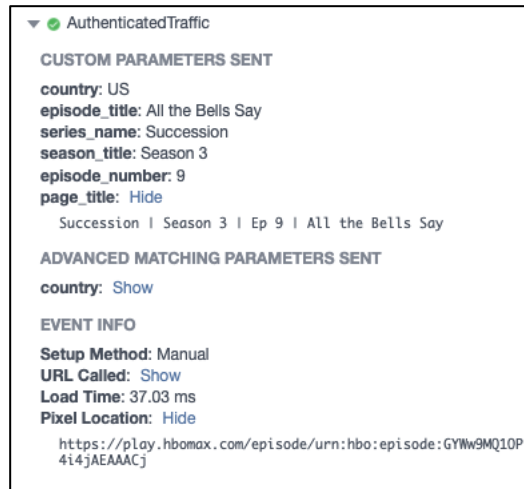
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30. AuthenticatedTraffic transmits the episode title, series name, season title, episode number, and title.

Figure 7



31. The event data from PageView and AuthenticatedTraffic, both jointly and independently, are sufficient to permit an ordinary person to identify a particular video's title and content.

32. HBO also transmits identifiers to Facebook that sufficiently permit an ordinary person to identify a specific individual.

33. HBO, through the Facebook Tracking Pixel, compels a subscriber's browser to transmit cookies to Facebook. These cookies contain, among other things, identifiers that Facebook links to a corresponding Facebook profile, and HBO compels their transmission for this purpose. The identifiers disclosed to Facebook depend on whether the subscriber's browser is currently logged into, or has recently logged into, a Facebook account.

34. A visitor currently logged into a Facebook account will transmit the c_user cookie to Facebook, which contains that visitor's unencrypted Facebook ID. When accessing the above video, for example, eleven cookies were sent to Facebook, ten of which are visible here:

Figure 8

presence	C%7B%22t3%22%3A%5...	.facebook.com
fr	0dE7rwGprs2d8aaAV.AWU...	.facebook.com
xs	47%3AGvsallOf3xBNKw%...	.facebook.com
usida	eyJ2ZXliOjEslmkljoiQXI2a...	.facebook.com
spin	r.1004998364_b.trunk_t.16...	.facebook.com
wd	1371x705	.facebook.com
dpr	1	.facebook.com
c_user	100035966074568	.facebook.com
sb	UzDuYXTWZ8_FQCGoAvz...	.facebook.com
datr	UzDuYaMalsoxu-9CeknfM...	.facebook.com

35. When a visitor's browser has recently logged out of Facebook, HBO will compel the browser to send a smaller set of cookies.

Figure 9

fr	0z0ELhGMn...	.facebook.com	/	2022-06-02...
wd	1681x935	.facebook.com	/	2022-03-11...
locale	en_US	.facebook.com	/	2022-03-11...
usida	eyJ2ZXliOjE...	.facebook.com	/	Session
datr	q3cKYs00M...	.facebook.com	/	2024-02-14...
sb	HXgKYq-tN...	.facebook.com	/	2024-02-14...

36. The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.³⁷ The _fbp cookie contains, at least, an unencrypted value that uniquely identifies a browser.³⁸ The datr cookie also identifies a browser.³⁹ Facebook, at a minimum, uses the fr and _fbp cookies to identify users.⁴⁰

³⁷ DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21, 2012), http://www.europe-v-facebook.org/ODPC_Review.pdf.

³⁸ FACEBOOK, CONVERSION API, <https://developers.facebook.com/docs/marketing-api/conversions-api/parameters/fbp-and-fbc/>.

³⁹ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

⁴⁰ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

37. If a visitor has never created a Facebook account, three cookies are transmitted.

Figure 10

_fbp	fb.1.1646425688715.789734596	.hbomax.com
fr	0PeATLNo21aFAd8Ca..BilnZZ.4U.AAA...	.facebook.com
sb	W3YiYitrO8eC_sEA6DCyY-Rt	.facebook.com

38. Without a corresponding Facebook ID, the fr cookie contains, at least, an abbreviated and encrypted value that identifies the browser. The _fbp cookie contains, at least, an unencrypted value that uniquely identifies a browser. Facebook uses both for targeted advertising.⁴¹

39. The fr cookie will expire after 90 days unless the visitor’s browser logs back into Facebook.⁴² If that happens, the time resets, and another 90 days begins to accrue.⁴³

40. The _fbp cookie will expire after 90 days unless the visitor’s browser accesses the same website.⁴⁴ If that happens, the time resets, and another 90 days begins to accrue.⁴⁵

41. The Facebook Tracking Pixel uses both first- and third-party cookies. A first-party cookie is “created by the website the user is visiting”—*i.e.*, HBO.⁴⁶ A third-party cookie is “created by a website with a domain name other than the one the user is currently visiting”—*i.e.*, Facebook.⁴⁷ The _fbp cookie is always transmitted as a first-party cookie. A duplicate _fbp

⁴¹ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies>

⁴² See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

⁴³ Confirmable through developer tools.

⁴⁴ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

⁴⁵ Also confirmable through developer tools.

⁴⁶ PC MAG, FIRST-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/first-party-cookie>. This is confirmable by using developer tools to inspect a website’s cookies and track network activity.

⁴⁷ PC MAG, THIRD-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/third-party-cookie>. This is also confirmable by tracking network activity.

cookie is sometimes sent as a third-party cookie, depending on whether the browser has recently logged into Facebook.

42. Facebook, at a minimum, uses the fr, _fbp, and c_user cookies to link to Facebook IDs and corresponding Facebook profiles.

43. A Facebook ID is personally identifiable information. Anyone can identify a Facebook profile—and all personal information publicly listed on that profile—by appending the Facebook ID to the end of <https://www.facebook.com/>.

44. The identifiers contained in the cookies are combined with the event data, allowing Facebook to know, among other things, what HBO Max videos a subscriber has watched.

45. HBO also discloses identifiers through Facebook’s “Automatic Advanced Matching for Web.” When Automated Advanced Matching is activated, the Pixel will “look for recognizable form field and other sources on your website that contain information such as first name, last name and email.”⁴⁸ The Pixel’s code will collect that information, “along with the event, or action, that took place.”⁴⁹ Facebook uses this information to better match visitors to their Facebook profiles, which in turn allows HBO to better target its advertisements.⁵⁰

⁴⁸ FACEBOOK, ABOUT ADVANCED MATCHING FOR WEB, <https://www.facebook.com/business/help/611774685654668?id=1205376682832142>

⁴⁹ *Id.*

⁵⁰ *Id.*

Figure 11

You can use Advanced Matching to help:

- Increase the number of **attributed conversions**. We can match more of the conversions that happen on your website to people on Meta. This helps you understand the impact of your ads on website conversions.
- Increase your **Custom Audience size**. We're able to better match your website visitors to people on Meta and increase the size of your Custom Audience.
- Decrease the cost per conversion. Conversion-optimized campaigns become more efficient because we can better identify and deliver ads to the types of people likely to take the actions you care about.

46. HBO Max's website contains various form fields. When signing up, for example, HBO Max displays fields for first name, last name, and email address.

Figure 12


STEP 2 OF 3

Create Your Account

You are one step closer to enjoying the best entertainment that HBO Max has to offer

First Name Last Name

Email Address

Password 

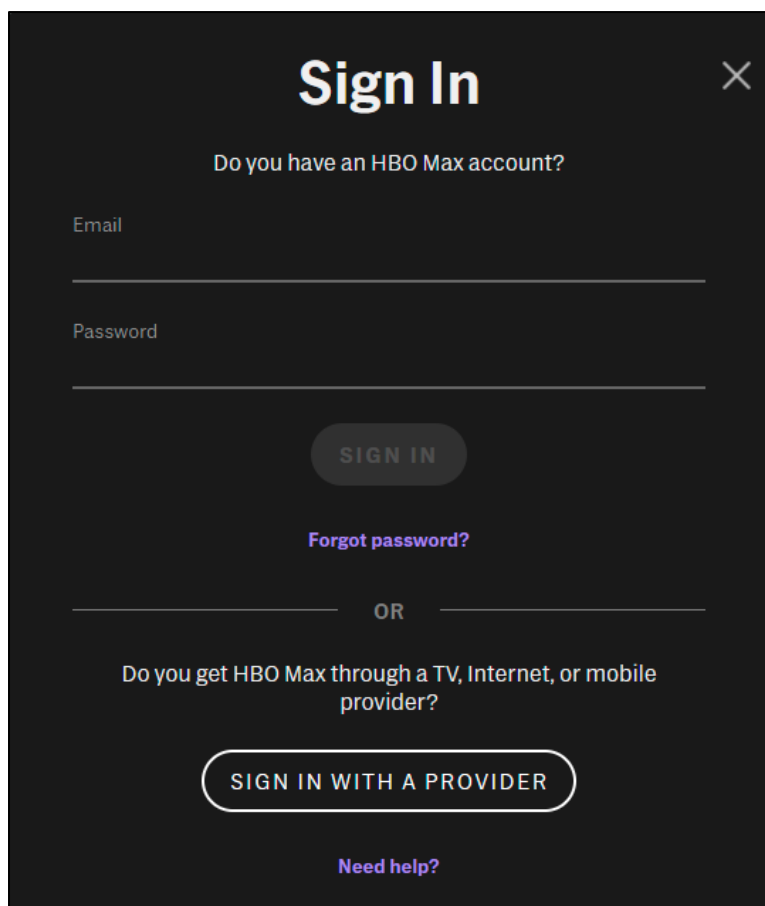
Your password must be at least 8 characters and include a number or special character.

By clicking Create Account, you confirm that you are 18 or over, you agree to the Terms of Use, and you acknowledge that you have read our Privacy Policy. You further acknowledge that we will send you marketing, promotions and other offers from HBO Max and its affiliates via email, social media and other channels. If you create a Kids' Profile, you agree to the processing of personal information collected via that profile as described in the Privacy Policy, if such consent is required where you live.

CREATE ACCOUNT

47. When signing in, HBO Max also displays a form field for email address.

Figure 13



The image shows a dark-themed 'Sign In' modal window for HBO Max. At the top, the title 'Sign In' is displayed in white, with a close button (X) in the top right corner. Below the title, the text 'Do you have an HBO Max account?' is centered. There are two input fields: 'Email' and 'Password', each with a horizontal line for text entry. Below the password field is a grey 'SIGN IN' button. Underneath the button is a link 'Forgot password?' in purple. A horizontal line with the word 'OR' in the center separates this section from the next. The next section asks 'Do you get HBO Max through a TV, Internet, or mobile provider?'. Below this is a white-outlined button labeled 'SIGN IN WITH A PROVIDER'. At the bottom, there is a link 'Need help?' in purple.

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48. HBO integrates two Facebook Tracking Pixels on its website, 205941270740350 and 235775471876347. *See* Figures 1-4. HBO has enabled Automatic Advanced Matching for both.

Figure 14

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84 fbq.loadPlugin("identity");
85 instance.optIn("235775471876347", "InferredEvents", true);
86 fbq.loadPlugin("jsonld_microdata");
87 instance.optIn("235775471876347", "MicrodataJsonLd", true);
88 config.set("235775471876347", "automaticMatching", {"selectedMatchKeys":["em","fn","ln","ge","ph","ct","st","zp","db","country","external_id"]});
89 fbq.loadPlugin("inferredevents");
90 fbq.loadPlugin("identity");
91 instance.optIn("235775471876347", "AutomaticMatching", true);
92 fbq.loadPlugin("iwlbootstrapper");
93 instance.optIn("235775471876347", "IWLBootstrapper", true);
94 fbq.loadPlugin("iwlparameters");
95 fbq.loadPlugin("inferredevents");
96 instance.optIn("235775471876347", "IWLParameters", true);
97 fbq.set("iwlExtractors", "235775471876347", []);
98 fbq.loadPlugin("cookie");
99 instance.optIn("235775471876347", "FirstPartyCookies", true);
100 fbq.loadPlugin("inferredevents");
101 fbq.loadPlugin("microdata");
102 fbq.loadPlugin("identity");
103 instance.optIn("235775471876347", "AutomaticSetup", true);
104 fbq.loadPlugin("automaticmatchingforpartnerintegrations");
105 instance.optIn("235775471876347", "AutomaticMatchingForPartnerIntegrations", true);
106 config.set(null, "batching", {"batchWaitTimeMs":501,"maxBatchSize":10});
107 config.set(null, "microdata", {"waitTimeMs":500});

```

Figure 15

```

fbq.registerPlugin("3059412707403250", {__fbEventsPlugin: 1, plugin: function(fbq, instance, config) { fbq.loadPlugin("inferredevents");
fbq.loadPlugin("identity");
instance.optIn("3059412707403250", "InferredEvents", true);
fbq.loadPlugin("jsonld_microdata");
instance.optIn("3059412707403250", "MicrodataJsonLd", true);
config.set("3059412707403250", "automaticMatching", {"selectedMatchKeys":["em","fn","ln","ph","ge","zp","ct","st"]});
fbq.loadPlugin("inferredevents");
fbq.loadPlugin("identity");
instance.optIn("3059412707403250", "AutomaticMatching", true);
fbq.loadPlugin("iwlbootstrapper");
instance.optIn("3059412707403250", "IWLBootstrapper", true);
fbq.loadPlugin("iwlparameters");
fbq.loadPlugin("inferredevents");
instance.optIn("3059412707403250", "IWLParameters", true);
fbq.set("iwlExtractors", "3059412707403250", []);
fbq.loadPlugin("cookie");
instance.optIn("3059412707403250", "FirstPartyCookies", true);
fbq.loadPlugin("inferredevents");
fbq.loadPlugin("microdata");
fbq.loadPlugin("identity");
instance.optIn("3059412707403250", "AutomaticSetup", true);
fbq.loadPlugin("automaticmatchingforpartnerintegrations");
instance.optIn("3059412707403250", "AutomaticMatchingForPartnerIntegrations", true);
config.set(null, "batching", {"batchWaitTimeMs":501,"maxBatchSize":10});
config.set(null, "microdata", {"waitTimeMs":500});

```

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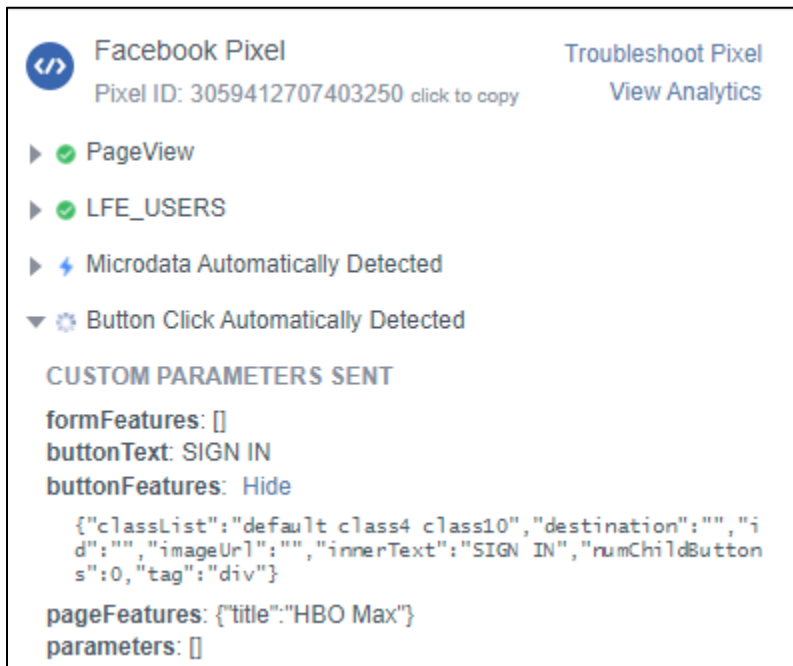
49. When subscribers enter their first name, last name, and email address into these form fields, HBO discloses that personal information to Facebook the social media site can link that information to the subscriber's subsequent activity.

50. HBO knows Facebook will match the Automatic Matching parameters with event data, thereby helping HBO "[i]ncrease the number of attributed conversions," "[i]ncrease [its] Custom Audience size," and "[d]ecrease the cost per conversion."⁵¹

51. HBO also discloses identifiers to Facebook through the event data itself.

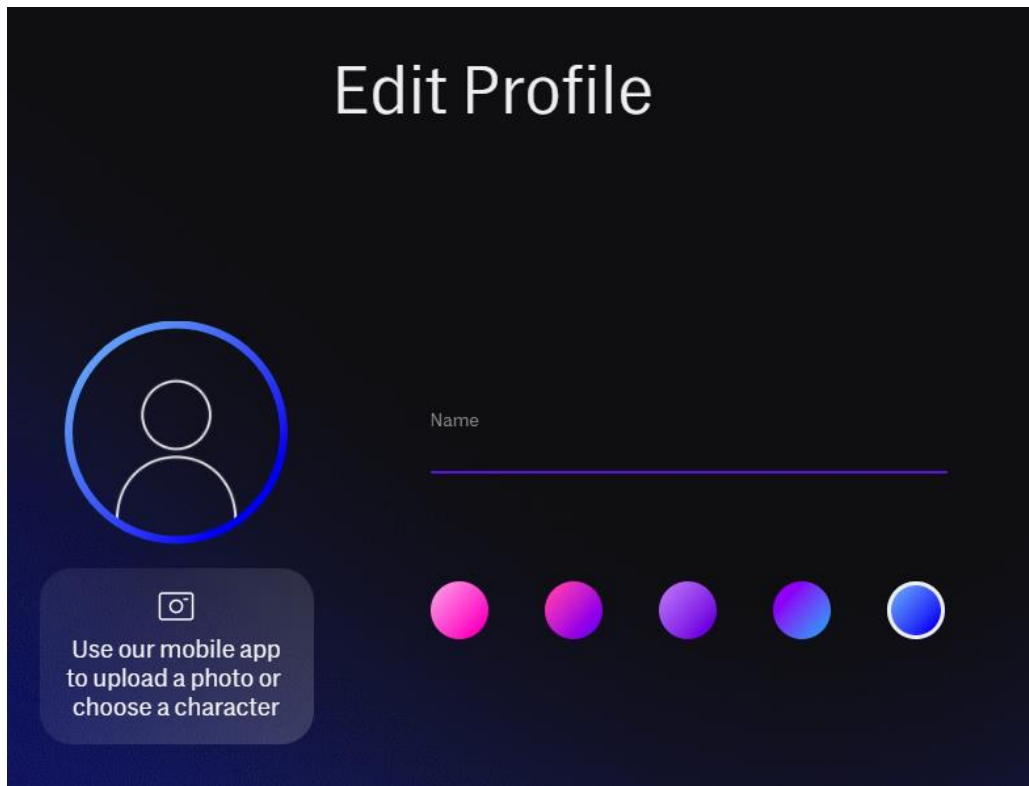
52. When a subscriber clicks on her profile, which contains her name, HBO's Facebook Tracking Pixel registers and discloses "button click" information. See Figure 3. That information includes the button's text and features.

Figure 16



53. HBO asks that subscribers input their name into the profile button.

⁵¹ *Id.*

Figure 17

54. When a subscriber clicks on her profile, HBO's Facebook Tracking Pixel transmits the button text for her profile, which contains her name. Facebook then matches the profile's name with that subscriber's subsequent activity.

55. By compelling a subscriber's browser to disclose the Advanced Matching parameters alongside event data for videos, HBO knowingly discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

56. By compelling a subscriber's browser to disclose the c_user cookie alongside event data for videos, HBO knowingly discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

57. By compelling a subscriber's browser to disclose the fr and _fbp cookies alongside event data for videos, HBO knowingly discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

58. By compelling subscribers' browsers to disclose the profile button text, which contains their names, alongside event data for videos, HBO knowingly discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

59. Facebook confirms these disclosures through its "Off-Facebook activity" report. That report is a "summary of activity that businesses and organizations share with us about your interactions, such as visiting their apps or websites."⁵² It confirms HBO identifies an individual's video viewing activities:

Figure 18

ID	3059412707403250
Event	CUSTOM
Received on	May 15, 2021 at 3:40 PM

60. The "ID" shown here is the same Facebook Pixel ID visible in Figures 1 through 4. The Facebook Pixel ID is a numerical code that uniquely identifies each Pixel.⁵³ In practice, this means HBO's Facebook Tracking Pixel has a Pixel ID that differs from all other websites.

⁵² FACEBOOK, WHAT IS OFF-FACEBOOK ACTIVITY?, <https://www.facebook.com/help/2207256696182627>. As discussed there, the Off-Facebook Activity is only a "summary" and Facebook acknowledges "receiv[ing] more details and activity than what appears in your Facebook activity." What is more, it omits "information we've received when you're not logged into Facebook, or when we can't confirm that you've previously used Facebook on that device."

⁵³ FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started>.

Every subscriber who views videos on HBO Max can pull their off-site activity report and see the same Pixel ID.

IV. HBO And Customer Lists

61. HBO uploads customer lists to Facebook to match subscribers to their Facebook profiles. As Facebook describes the process: “[Advertisers] provide us with information about [their] existing customers and we match this information with Facebook profiles.”⁵⁴ The customer lists must contain “‘identifier[s]’ (such as email, phone number, address),”⁵⁵ that Facebook then matches to “Facebook profiles so that [advertisers] can advertise to [their] customers on Facebook, Instagram and Audience Network.”⁵⁶

62. HBO combines these customer lists with offline event data to effectively target subscribers. When advertisers create an ad campaign, Facebook will “match the offline data [they] upload to the event set so that [they] can see how much [their] ads resulted in offline activity.”⁵⁷ Facebook also recommends that advertisers, like Defendant, provide an accurate timestamp for each event, down to “the minute or second.”

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⁵⁴ FACEBOOK, CREATE A CUSTOMER AUDIENCE LIST, <https://www.facebook.com/business/help/170456843145568?id=2469097953376494>.

⁵⁵ *Id.*

⁵⁶ FACEBOOK, ABOUT CUSTOMER LIST CUSTOM AUDIENCES, <https://www.facebook.com/business/help/341425252616329?id=2469097953376494>.

⁵⁷ FACEBOOK, UPLOAD OFFLINE EVENT DATA, <https://www.facebook.com/business/help/155437961572700?id=565900110447546>.

Figure 19

Upload Your Offline Events

Upload a CSV file with your recent offline event information. Any customer information will be hashed using SHA256 during the upload process.
[Learn more about what information to include with your offline events.](#)

[Download example CSV file](#) [Next: Map Data](#)

Customer Details

Include data such as customer name, email address and phone number. This data will be hashed during upload.

[View Examples.](#)

Event Time

Include an accurate timestamp for each event. We recommend including timestamps accurate to the minute or second.

[View Examples.](#)

Event Details

Include details such as event name (purchase, lead, registration etc.), value and currency (if applicable) and order id.

[View Examples.](#)

[Select CSV File](#)

Or drag and drop your file here

[Learn more about preparing your offline events to upload.](#)

63. As with Facebook’s Business Tools, HBO uploads customer lists and offline events so it can match a subscriber’s video viewing history with her corresponding Facebook profile.

64. Facebook again confirms this is true. Facebook provides subscribers the ability to pull reports for “Audience-based advertising,” which shows “Advertisers using your activity or information.” Both HBO and HBO Max upload list data to match subscribers with their video viewing history.

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Figure 20

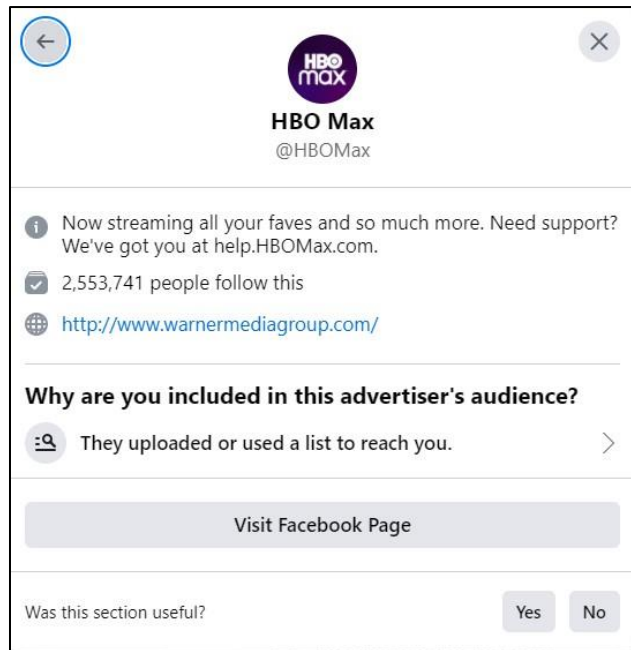
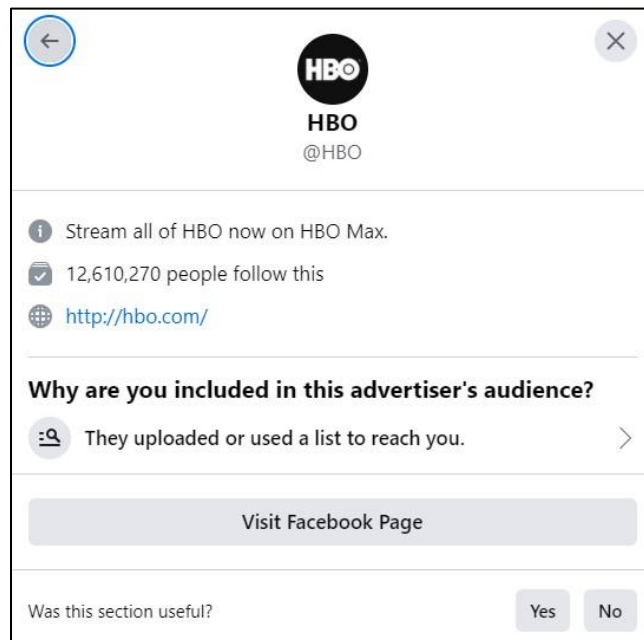


Figure 21



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V. HBO Never Receives Consent

65. To disclose personally identifiable information, the VPPA requires that a video tape service provider, like Defendant, receive the “informed, written consent (including through an electronic means using the Internet),” which mandates three distinct details. 18 U.S.C. § 2710(b)(2)(B)(i)-(iii). First, HBO must solicit consent through “a form distinct and separate from any form setting forth other legal or financial obligations of the consumer.” *Id.* In other words, a standard privacy policy will not suffice. Second, consent must be received “at the time the disclosure is sought” or “given in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner.” *Id.* The choice between these two options must be “at the election of the consumer.” Third, the video tape service provider must “provide[] an opportunity, in a clear and conspicuous manner, for the consumer to withdraw on a case-by-case basis or to withdraw from ongoing disclosures, at the consumer’s election.” *Id.*

66. HBO never receives consent in “a form distinct and separate” from other legal obligations, nor does HBO temporally limit its disclosures to two years, nor does it provide consumers with an ability to withdraw from disclosures on a “case-by-case” basis. *See* HBO, HBO MAX PRIVACY POLICY, <https://www.hbomax.com/privacy/en-emea>.

EXPERIENCES OF NAMED PLAINTIFFS

I. Plaintiff McDaniel

67. In 2020, Plaintiff McDaniel subscribed to HBO Max through Amazon Prime Channels.

68. In 2007, Plaintiff McDaniel created a Facebook account.

69. Plaintiff McDaniel frequented HBO Max to watch videos.

70. Defendant disclosed to Facebook identifiers for Plaintiff McDaniel, including her email address, first name, last name, Facebook ID, and browser identifiers, among other identifying information.

71. Each time Plaintiff McDaniel watched a video on HBO Max, Defendant also disclosed to Facebook what videos she watched, transmitting event data like what page she accessed, what buttons she clicked, and details about the particular video she requested, like the series name, season number, and episode title.

72. Plaintiff McDaniel discovered HBO surreptitiously collected and transmitted her personally identifiable information in January 2022.

73. At no time did Plaintiff McDaniel provide informed, written consent to Defendant. In particular, Defendant never received consent from Plaintiff McDaniel in a form separate and distinct from other legal obligations. Defendant also never provided Plaintiff McDaniel with an ability to limit disclosures within two years or on a case-by-case basis.

II. Plaintiff Constance Simon

74. In 2021, Plaintiff Constance Simon subscribed to HBO Max through a cellular phone plan with AT&T.

75. In 2010, Plaintiff Simon created a Facebook account.

76. Plaintiff Simon frequented HBO Max to watch videos.

77. Defendant disclosed to Facebook identifiers for Plaintiff Simon, including her email address, first name, last name, Facebook ID, and browser identifiers, among other identifying information.

78. Each time Plaintiff Simon watched a video on HBO Max, Defendant also disclosed to Facebook what videos she watched, transmitting event data like what page she

accessed, what buttons she clicked, and details about the particular video she requested, like the series name, season number, and episode title.

79. Plaintiff Simon discovered HBO surreptitiously collected and transmitted her personally identifiable information in March 2022.

80. At no time did Plaintiff Simon provide informed, written consent to Defendant. In particular, Defendant never received consent from Plaintiff Simon in a form separate and distinct from other legal obligations. Defendant also never provided Plaintiff Simon with an ability to limit disclosures within two years or on a case-by-case basis.

PARTIES

81. Plaintiff McDaniel is, and has been at all relevant times, a resident of Apple Valley, California and has an intent to remain there, and is therefore a domiciliary of California.

82. Plaintiff Simon is, and has been at all relevant times, a resident of Winston Salem, North Carolina and has an intent to remain there, and is therefore a domiciliary of North Carolina.

83. Defendant Home Box Office, Inc. is a Delaware corporation with its principal place of business at 1100 Avenue of the Americas, New York. Defendant develops, owns, and operates HBO Max, which is used throughout New York and the United States.

JURISDICTION AND VENUE

84. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under a law of the United States (the VPPA).

85. This Court has personal jurisdiction over Defendant because Defendant's principal place of business is in New York, New York.

86. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District.

CLASS ALLEGATIONS

87. **Class Definition:** Plaintiffs seek to represent a class of similarly situated individuals defined as all persons in the United States who subscribe to HBO Max (the “Class”).

88. Subject to additional information obtained through further investigation and discovery, the above-described Class may be modified or narrowed as appropriate, including through the use of multi-state subclasses.

89. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiffs do not know the exact number of members of the aforementioned Class. However, given the popularity of Defendant’s website, the number of persons within the Class is believed to be so numerous that joinder of all members is impractical.

90. **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2), 23(b)(3)):** There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual members of the Class include:

- (a) whether Defendant collected Plaintiffs’ and the Class’s PII;
- (b) whether Defendant unlawfully disclosed and continues to disclose its subscribers’ PII in violation of the VPPA;
- (c) whether Defendant’s disclosures were committed knowingly; and
- (d) whether Defendant disclosed Plaintiffs’ and the Class’s PII without consent.

91. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiffs' claims are typical of those of the Class because Plaintiffs, like all members of the Class, subscribed to HBO Max, watched videos on that platform, and had their PII collected and disclosed by Defendant.

92. **Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiffs have retained and are represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation, including litigation concerning the VPPA and its state-inspired offspring. Plaintiffs and their counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiffs are able to fairly and adequately represent and protect the interests of the Class. Neither Plaintiffs nor their counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiffs have raised viable statutory claims or the type reasonably expected to be raised by members of the Class, and will vigorously pursue those claims. If necessary, Plaintiffs may seek leave of this Court to amend this Class Action Complaint to include additional representatives to represent the Class, additional claims as may be appropriate, or to amend the definition of the Class to address any steps that Defendant took.

93. **Superiority (Fed. R. Civ. P. 23(b)(3)):** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all members of the Class is impracticable. Even if every member of the Class could afford to pursue individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents

few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiffs anticipate no difficulty in the management of this action as a class action.

CAUSES OF ACTION

COUNT I
VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT
18 U.S.C. § 2710, *et seq.*

94. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

95. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Defendant.

96. Defendant is a “video tape service provider” because it is the sixth largest streaming site on the planet and is thereby “engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.” 18 U.S.C. § 2710(a)(4).

97. Plaintiffs and members of the Class are “consumers” because they paid money on a recurring basis to subscribe to HBO Max. 18 U.S.C. § 2710(a)(1).

98. HBO disclosed to a third party, Facebook, Plaintiffs’ and the Class members’ personally identifiable information. HBO utilized the Facebook’s Business Tools to compel Plaintiffs’ web browser to transfer Plaintiffs’ identifying information, like their Facebook ID and email address, along with Plaintiffs’ video viewing behavior, like the title of the videos they viewed.

99. Plaintiffs and the Class members viewed video clips using HBO’s website.

100. HBO knowingly disclosed Plaintiffs' PII because it used that data to build audiences on Facebook and retarget them for its advertising campaigns.

101. Plaintiffs and Class members did not provide Defendant with any form of consent—either written or otherwise—to disclose their PII to third parties.

102. Nor were Defendant's disclosures made in the "ordinary course of business" as the term is defined by the VPPA. In particular, HBO's disclosures to Facebook were not necessary for "debt collection activities, order fulfillment, request processing, [or] transfer of ownership." 18 U.S.C. § 2710(a)(2).

103. On behalf of themselves and the Class, Plaintiffs seek: (i) declaratory relief; (ii) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with VPPA's requirements for protecting a consumer's PII; (iii) statutory damages of \$2,500 for each violation of the VPPA pursuant to 18 U.S.C. § 2710(c); and (iv) reasonable attorneys' fees and costs and other litigation expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek a judgment against Defendant, individually and on behalf of all others similarly situated, as follows:

- (a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiffs as representatives of the Class, and naming Plaintiffs' attorneys as Class Counsel to represent the Class;
- (b) For an order declaring that Defendant's conduct violates the statutes referenced herein;
- (c) For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;

- (d) An award of statutory damages to the extent available;
- (e) For punitive damages, as warranted, in an amount to be determined at trial;
- (f) For prejudgment interest on all amounts awarded;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b)(1), Plaintiffs demand a trial by jury of all issues so triable.

Dated: March 8, 2022

Respectfully submitted,

By: /s/ Joshua D. Arisohn

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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiffs and the Putative Class